08 August 2024

Final GNSO Council Review of Kigali GAC Communiqué

TO: Tripti Sinha

Chair, ICANN Board of Directors

CC: Nicolas Caballero, GAC Chair

Dear Tripti,

On behalf of the GNSO Council, we are hereby transmitting to you the GNSO Council's *final* review of the Kigali GAC Communiqué Advice and Issues of Importance as adopted by the GNSO Council on 08 August 2024.

The GNSO Council's review of each GAC Communiqué is an effort to provide feedback to you, in your capacity as members of the ICANN Board, as you consider issues referenced in the Communiqué that we believe relate to policies governing generic Top-Level Domains. Our intent is to inform you and the broader community of gTLD policy activities, either existing or planned, that may directly or indirectly relate to advice provided by the GAC. The GNSO Council hopes that the input provided through its review of the GAC Communiqué will enhance co-ordination and promote the sharing of information on gTLD related policy activities between the GAC, Board and the GNSO. As it relates specifically to this GAC Communiqué, the GNSO Council appreciates the GAC's participation and contributions on the GNSO Guidance Process (GGP) on Applicant Support.

Kindly,

Greg DiBiase, GNSO Chair

GAC Advice - Topic	GAC Advice Details	Does the advice concern an issue that can be considered within the remit# of the GNSO (yes/no)	*If yes, is it subject to existing policy recommendations, implementation action or ongoing GNSO policy development work?*	*How has this issue been/is being/will be dealt with by the GNSO?*
1. Applicant Support	i. To take final decisions on successful Applicant Support Program (ASP) applicants, who applied within the twelve-month time period, at the conclusion of that period as opposed to on a first come, first served basis. T`his would mean that no preference is given to applicants who applied earlier in the twelve month period, and will help ensure underserved regions are not at a disadvantage through the ASP.	yes	(i) The Applicant Support Program (ASP) arises out of the recommendations of the SubPro PDP, as supplemented by the recommendations of the GNSO Guidance Process (GGP) on Applicant Support. The ASP is being implemented by ICANN Org, supported by the SubPro IRT	(i) The timing of notification of successful applicants was one of the issues considered by the GNSO Guidance Process (GGP) on Applicant Support. The GGP operated on a representative model, with members from the GNSO Stakeholder Groups and Constituencies, the GAC and the ALAC. The GGP's Final Report (https://gnso.icann.org/sites/default/files/policy/2023/correspondence/ggp-team-et-al-to-gnso-council-et-al-08dec23-en.pdf) includes at the following recommendation relating to the timing of notification: **"Recommendation 9**: ICANN org should develop a flexible, predictable, and responsive Applicant Support Program in order to communicate the results of evaluation process and allow applicants to know their range of

				support allocations as early as possible in a transparent manner."
				The following rationale was given:
				"Per the Initial Report, the working group discussed how to deal with the timing of notifications of funding for qualified candidates and the concern that it could be detrimental for applicants to have to wait until the end of the application window before being notified of funding. In this regard, working group members suggested that the GGP could provide a guidance recommendation in the form of principles that the Applicant Support Program should allow for flexibility in the timing of notifications. Following the public comment review, the working group agreed to emphasize how important early notice is to applicants."
				This recommendation 9 did not differ in substance from the version contained in the GGP Initial Report, which was put out to public comment.
				All the public comment input received on recommendation 9 was supportive, and included input from the GAC who commented that: "The GAC supports the recommendation as written and

				wishes to highlight the importance of providing an early indication of support to applicants when this is feasible." (https://community.icann.org/display/GGPGIRFAS/Guidance+Recommendation+Initial+Report+-+Public+Comment+Review)

	iii. To initiate a facilitated dialogue, involving representatives from the GAC, GNSO and the ALAC, to assess the feasibility of leveraging (including contracting and financing the services of) a platform to which new gTLDs, supported through the ASP, could move to eventually operate their own back-end services.			The GNSO Council has not yet had the opportunity to discuss the GAC's suggestion iii. "To initiate a facilitated dialogue" and thus does not have any guidance to offer at this time on this issue.
2. Auctions: Mechanisms of Last Resort/Private Resolution of Contention Sets in New gTLDs	i. To prohibit the use of private auctions in resolving contention sets in the next round of New gTLDs. ii. To urgently initiate a focused community-wide discussion (including with the GAC and ALAC) on the resolution of contention sets, with a view to finding alternatives to private auctions and ICANN auctions of last resort, before the ICANN Board takes any action in a manner that may be inconsistent with the ICANN77 Washington D.C. Communiqué GAC Consensus Advice.	Yes	(i) The Board adopted SubPro recommendation 35.3 & 35.5 with GNSO Council-Approved Clarifications: The GNSO Council confirms that the references to private auctions in Recommendations 35.3 and 35.5 merely acknowledge the existence of private auctions in 2012 and should NOT be seen as an endorsement or prohibition of their continued practice in future rounds of the New gTLD Program. The Council notes that there were extensive discussions on the use of private auctions in the SubPro working group. To the extent that draft recommendations were developed as to private auctions, these did not receive consensus	

			support in the working group but did receive strong support with significant opposition. (ii) The Board adopted 35.1 in March 2023 which affirmed the use of ICANN Auctions of last resort. According to the Rationale in the SubPro Final Report: *The Working Group discussed a number of possible alternatives to ICANN Auctions of Last Resort for resolving contention sets, as detailed in the Supplemental Initial Report.* *In examining the benefits and drawbacks of these alternatives and the different perspectives provided in public comment, the Working Group did not come to any agreement that there is a better option that would be widely supported by the community. Therefore, the Working Group affirms the use of ICANN Auctions of Last Resort as a method of last resort to resolve contention sets.*	
3. Follow-Up on Previous advice: Urgent Requests for Disclosure of Registration Data	It is the GAC's understanding that the GNSO needs to provide input on the next steps, building on the Board's conclusion that "the proposed urgent response policy is not fit for purpose	Yes	The issue of Urgent Requests relates to the implementation of Board-adopted GNSO policy recommendations of the EPDP Temporary Specification for gTLD Registration Data – Phase 1. Specifically: Recommendation #18	The GNSO Council discussed this issue at its meeting on 18 July 2024 and is considering next steps including further dialogue with the Board and GAC. The treatment of PDP policy recommendations is governed by the

	and must be revisited". 9 https://gnso.icann.org/sites/default/files/policy/2024/correspondence/sinha-to-dibiase-03june24-en.pdf 13 The GAC urges the GNSO Council and the Board to take any necessary steps in an expeditious manner to "establish a clear process and a timeline for the delivery of a policy on Urgent Requests for domain name registration data", given the vital public safety interests related to such requests, as per the ICANN79 San Juan GAC Advice.		states: The EPDP Team recommends that criteria for a Reasonable Request for Lawful Disclosure and the requirements for acknowledging receipt of a request and response to such request will be defined as part of the implementation of these policy recommendations but will include at a minimum: … ● Timeline & Criteria for Registrar and Registry Operator Responses: … ● A separate Timeline of [less than X business days] will be considered for the response to 'Urgent' Reasonable Disclosure Requests, those Requests for which evidence is supplied to show an immediate need for disclosure [time frame to be finalized and criteria set for Urgent requests during implementation]. The EPDP Team recommends that the above be implemented and further work on defining these criteria commences as needed and as soon as possible	PDP Manual, Annex A of the GNSO Operating Procedures, Section 16 of which deals with amendment or modification, as follows: "16. Amendments or Modifications of Approved Policies Approved GNSO Council policies may be modified or amended by the GNSO Council at any time prior to the final approval by the ICANN Board as follows: 1. The PDP Team is reconvened or, if disbanded, reformed, and should be consulted with regards to the proposed amendments or modifications; 2. The proposed amendments or modifications are posted for public comment for not less than thirty (30) days; 3. The GNSO Council approves of such amendments or modifications with a Supermajority Vote of both Houses in favour. Approved GNSO Council policies that have been adopted by the ICANN Board and have been implemented by ICANN Staff may only be amended by the initiation of a new PDP on the issue. [emphasis added]." The process for amendment of

				recommendations prior to final approval by the ICANN Board is therefore not applicable to this Recommendation 18, since it has already been approved by the GNSO Council and adopted by the ICANN Board.

GNSO COUNCIL REVIEW OF ISSUES OF IMPORTANCE CONTAINED IN THE ICANN80 GAC COMMUNIQUE

Topic	Details	To which group(s) is the GAC text directed?	Does the issue of importance concern an issue that can be considered within the remit[1] of the GNSO (yes/no)	If yes, is it subject to existing policy recommendations, implementation action or ongoing GNSO policy development work? Please specify.	How has this issue been/is being/will be dealt with by the GNSO?	Does the GNSO want to provide additional feedback to the Board, the GAC, and/or another group? Please specify the response, target audience, and suggested method of communication or engagement (for example via this template, correspondence, and/or dialogue).
1. Transparency, GNSO Statements of Interest (SOIs) and Code of Ethics	The GAC welcomes the will expressed by the Board to develop a code of ethics to, inter alia, address transparency issues in SOIs. We look forward to community discussions ahead of ICANN81 based on a discussion draft presented by the Board.	Board	yes	SOI was dealt with by the CCOICI and its task force.	The CCOICI recommendation report containing relevant SOI recommendations was not adopted by the GNSO Council following a formal vote: https://gnso.icann.org/sites/default/files/policy/2023/minutes/minutes-gnso-council-part1-25oct23-en.pdf	With regard to a code of ethics, Council notes that although SOIs are a GNSO document and a requirement for participation in GNSO processes, this issue is of wider community interest and relevance because: ● Other groups, including in particular advisory committees such as the GAC, ALAC and SSAC give advice to the Board on policy matters which are within

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[1] As per the ICANN Bylaws: 'There shall be a policy-development body known as the Generic Names Supporting Organization (GNSO), which shall be responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains.

						the GNSO's remit, but are not subject to the GNSO's SOI requirements unless they specifically participate in the GNSO processes such as PDPs. These are often open to, and participated-in by, all.
						● GNSO policy relates to gTLDs and thus has impact outside of the GNSO community.
						Consequently, the GNSO supports the idea of a code of ethics with wider application than just the GNSO.
						The GNSO requests that the Board keeps it informed and consulted.

2. Registry Voluntary Commitments (RVCs) / Public Interest Commitments (PICs) in New gTLDs	The GAC notes that the Board resolved on 8 June 2024 that, per the ICANN Bylaws, RVCs in New gTLD applications that "restrict content in new gTLDs" will neither be accepted nor enforced by ICANN as part of its contractual relationship with registries. In this regard, in order to maximize predictability for applicants, governments, and other participants in the community, the GAC requests that the Board, in consultation with the community, provide clear guidance well before the launch of the forthcoming application round regarding what the Board will consider as RVCs "restricting" content. Such guidance should	Board	yes	SubPro recommendation 9.1: "Mandatory Public Interest Commitments (PICs) currently captured in Specification 11 3(a)-(d) of the Registry Agreement must continue to be included in Registry Agreements for gTLDs in subsequent procedures. Noting that mandatory PICs were not included in the 2007 recommendations, this recommendation puts existing practice into policy. One adjustment to the 2012 implementation is included in the following recommendation (Recommendation 9.2)."	The Board adopted recommendation 9.1 with GNSO Council-approved clarifications, directing the ICANN Interim President and CEO, or her designee(s), to initiate and facilitate a Board-level community consultation before starting the implementation process.

The Board resolved on 8 June 2024 to not accept or enforce new gTLD applications that restrict content. | |

	include illustrative examples of RVCs which would, and would not, involve the restriction of content.					
3. New gTLDs Subsequent Procedures Implementation Review Team (IRT)	During the bilateral session with the GNSO, the GAC posed a question about the high cost of the Registry Service Provider technical evaluation fee planned for the New gTLD process. The GAC expresses its concerns regarding financial barriers to entry for new applicants participating in the next round of gTLDs, specifically those from within the underserved regions.	unclear. ICANN Org?	no	The SubPro PDP developed policy on the next round, but this is implemented by ICANN Org, with input from the IRT, comprised of members of the community.	The level of fees is an implementation matter within ICANN Org's remit. The fee structure for the RSP program was presented to the IRT for the first time shortly before ICANN80. The GNSO Council's role in the IRT, via its Liaisons, is to ensure that implementation aligns with its policy recommendations. The matter of fees is outside of the GNSO Council's remit, unless those fees serve to contradict or undermine the GNSO's policy recommendations, albeit the GNSO may choose to provide input to ICANN Org, as may others in the community.	

4. Registration Data Request Service (RDRS)	The GAC reiterates the importance of the continued promotion of and education about RDRS to ensure the community, including both requestors and registrars, are aware of the uses and limits of this pilot program, as well as its intended purpose, to inform work toward an eventual Standardized System for Access and Disclosure (SSAD).	unclear	yes	RDRS standing committee	The RDRS Standing Committee has been working closely with ICANN Org to consider feedback and discuss improvements to the RDRS, which are reasonable to pursue during the pilot.	
5. Registration Data Accuracy	The GAC takes note of the GNSO's decision to pause the work of the Accuracy Scoping Team while the Contracted Parties and ICANN finalize their forthcoming Data Processing Specification (DPS) and appreciates the GNSO's update at ICANN80 on the status of these negotiations. The GAC stresses the importance of		yes	The work of the Accuracy Scoping Team is still on pause.	The negotiation of the DPSs is a matter between ICANN and the Registries and Registrars respectively, although the GNSO Council has urged that these be resolved as quickly as possible. The GNSO Council discussed the issue of next steps on Accuracy briefly during its meeting at ICANN80 Kigali, and during its July meeting. The	Although the Council has referred to the outstanding DPS as a factor in its decision to pause the work of the Accuracy Scoping Team, this is only one issue. In its briefing on 19 October 2023 ICANN Org identified a number of other challenges to pursuing work on accuracy. The GNSO Council is discussing next steps.

	completing the DPS as soon as possible so the community can resume efforts towards scoping policy work on accuracy of domain name registration data.				Council will reach out to its respective stakeholder groups and constituencies to propose further ideas on level-setting and how to progress on the issue of data accuracy.	
6. Support for the Privacy and Proxy Services Accreditation Implementation Review Team	The GAC appreciates ICANN Org's efforts to facilitate a process to explore options for the implementation of recommendations that are still relevant from the previous Policy Development Process on Privacy and Proxy Services Accreditation Issues (PPSAI). Doing so will ensure the community is able to produce evidence-based registration data policy, including on the use of Privacy and Proxy services.	ICANN Org	yes	During its wrap-up session at ICANN79, the GNSO Council appointed two liaisons, Paul McGrady and Stephanie Perrin, to serve as GNSO Council liaisons to the reconstituted PPSAI IRT.	The PPSAI IRT had a kick-off meeting on 13 June in Kigali.	Unlike a traditional IRT, the PPSAI IRT would start its work by answering 'Threshold Questions'. The Council will only decide on next steps (new policy work/ implementation/ half half) after the IRT communicates its answers to the threshold questions.